



PERMANENT MISSION
OF ESTONIA TO THE UN

Statement of the Republic of Estonia

73rd Session of the United Nations General Assembly Sixth Committee

Report of the International Law Commission Cluster II

Mr Chairman,

Today I will address three topics: 1) the protection of the atmosphere, 2) the provisional application of treaties and 3) peremptory norms of general international law (*jus cogens*).

Mr Chairman,

Estonia would like to thank Special Rapporteur Mr Shinya Murase and the Commission for the work done on **the protection of the atmosphere**. Developing guidelines on protection of the atmosphere is an important task as the guidelines combine several important obligations (e.g. the obligation to protect the atmosphere and the obligation to conduct environmental impact assessments) into one document. As the protection of the atmosphere concerns all human beings and the international community as a whole, the demand for international cooperation cannot be overemphasized.

First let me state, that Estonia aligns itself with the statement made by the European Union.

Estonia welcomes the 5th report of the Special Rapporteur and the adoption of the whole set of guidelines and commentaries to them. Concerning the guideline 10 paragraph 2, which notes, that States should make an effort to give effect to the recommendations contained in the draft guidelines, we consider the cooperation of

all States of utmost importance in this matter and support the idea that States could endeavour the recommendations, for example through political declarations.

We would also like to express our strong support for the inclusion of guideline 11 paragraph 2 (a), which concerns the compliance with international obligations and missing capabilities of some States. We especially welcome the mentioning of assisting States in case of non-compliance. We consider the recognition of specific challenges that the States could have, in particular that the developing and least developed countries could face, to be a very valid notion, which needs to be taken into account in the guidelines. Indeed, we have our common responsibility to protect the atmosphere as the atmosphere concerns us all, but at the same time, we have different capabilities. Providing assistance to the States concerned is therefore an essential tool to improve the compliance with international obligations.

Estonia also welcomes the inclusion of guideline 12. Estonia has always supported the peaceful settlement of disputes. We also find it necessary to have the reference to the scientific and technical aspect of environmental disputes in the guidelines and emphasize the need to take into account the knowledge of scientific and technical experts in the dispute settlement.

To conclude, we note that the guidelines have been transmitted to States and international organisations for comments and observations and are grateful for this opportunity. We will carefully study the text and reply to the Commission as appropriate.

Estonia once again expresses its appreciation for the work done by the Special Rapporteur and the Commission on this topic.

Mr Chairman,

We are now turning to the topic **provisional application of treaties**. Estonia expresses its gratitude for the work done by the Special Rapporteur Juan Manuel Gómez-Robledo and the Commission for adopting on first reading a set of 12 draft guidelines with commentaries thereto.

Estonia aligns itself with the statement made by the European Union.

While agreeing with the content of draft guideline 3 and understanding that it is intended to be read together with draft guideline 4, our observation is that the current wording of the two guidelines is repetitive in the sense that draft guideline 4 entails the essence of draft guideline 3. We therefore suggest either merging the two draft guidelines or rewording draft guideline 4 so that it removes the reference to the form of provisional application by means of treaty itself providing it.

We welcome the inclusion of the draft model clauses intending to reflect best practice with regard to the provisional application of treaties and we encourage formulating them for a wider range of situations that may arise.

Estonia notes that the draft guidelines have been transmitted to States and international organisations for comments and observations and is grateful for this opportunity. We will carefully study the text and revert to the Commission as appropriate.

Estonia once again congratulates the Commission and the Special Rapporteur for the important work done so far.

Mr Chairman,

Concerning **peremptory norms of general international law (*jus cogens*)**, Estonia would like to convey our gratitude to the Special Rapporteur Mr Dire Tladi for his work on establishing further 13 draft conclusions. We believe that our objective as States is to participate and contribute to the development of legal norms and instruments.

Estonia welcomes the 3rd report of the Special Rapporteur and acknowledges the need for clarity on the concept of *jus cogens* and the difficulty this process presents. It is important to identify binding *jus cogens* norms on the basis of consensus. Estonia understands that the outcome of the work done by the Commission has a far-reaching effect for international community. This is why the Commission has the full support of Estonia on the process of identifying *jus cogens* norms.

Regarding the presented draft conclusions, Estonia welcomes the requirement in draft conclusion 10 for interpretation of existing treaty provision to be consistent

with peremptory norms as far as possible. We support the suggestion for widening the scope of draft conclusion 11 that could also cover acts of international organizations that create obligations for States.

Estonia welcomes draft conclusion 12 paragraph 1, which requires States to eliminate consequences of an act performed under a provision in conflict with peremptory norms. Since there is a deviation of the wording from that of Article 71 of the Vienna Convention on the law of treaties, the Commission could clarify the need for the different wording of the draft conclusion.

Draft conclusion 14 recommends a dispute settlement procedure. Estonia believes this matter could be further analysed by the Commission since there are regulatory differences expressed in Article 33 of the Charter of the United Nations and Article 66 (a) of the Vienna Convention. In addition, the draft conclusion and the commentary seem to be in contradiction, which should be clarified.

We would like to note that draft conclusion 15 does not reflect the issue in its full complexity by analysing all aspects of customary international law as basis for surfacing *jus cogens* norms. We support the amendment suggested in the commentaries to indicate that the elements required for the development of customary international law – State practice and *opinio juris* – cannot give rise to a norm not in accordance with *jus cogens*.

Regarding the Estonian position on draft conclusion 18 on the relationship between *jus cogens* norms and obligations *erga omnes*, we are on a stance that it deserves a more elaborate analysis. The same is required for draft conclusion 19. Draft conclusion 20 indicates a duty to cooperate in a case of serious breach of a *jus cogens* norm, however, it remains unclear what constitutes a serious breach, which enacts said obligations.

In conclusion, Estonia once again expresses its appreciation for the work of the Special Rapporteur and the Commission on this topic.

Thank you for the attention.